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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Equal Access and Interconnection) **CC Docket No. 94-54**
Obligations Pertaining to) **RM-8012**
Commercial Mobile Radio Services)

To: The Commission

COMMENTS OF E.F. JOHNSON COMPANY

E.F. Johnson Company ("E.F. Johnson" or the "Company"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its Comments in response to the Notice of Proposed Rule Making and Notice of Inquiry ("Notice") adopted in the above reference proceeding¹ in which the Commission: 1) considers whether to impose equal access obligations upon commercial mobile radio service ("CMRS") providers; 2) considers rules to govern requirements for interconnection service provided by local exchange carriers ("LECs") to CMRS providers; and 3) seeks to determine whether to impose rules requiring CMRS providers to interconnect with each other.

I. INTRODUCTION

E.F. Johnson is a leading designer and manufacturer of radio communications and specialty communications products for commercial and public safety use. Founded over seventy (70) years ago as an electronics components manufacturer, E.F. Johnson entered the radio communications equipment market in the late 1940's and is one of the three largest providers of land mobile radio systems in the United States. It produces base

¹Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54, FCC 94-145, Released July 1, 1994.

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stations, vehicular mounted and portable transceivers that operate in various portions of the radio spectrum that are used by a variety of entities requiring communications capabilities. The Company manufactures products for the 800 MHz, 900 MHz and 220 MHz frequency bands, among others.² CMRS operators will operate in these bands and in spectrum now used by licensees in the Business Radio Service, for which the Company also manufactures and distributes products.

This Notice continues the Commission's evaluation of the CMRS marketplace required by recent amendments to the Communications Act. The Notice tentatively concludes that equal access obligations should be imposed upon cellular carriers. The Commission seeks comments on the costs and benefits of imposing equal access obligations on other classes of CMRS providers. The Commission also seeks to determine whether to require LECs to offer interconnection to CMRS providers under tariff, or whether to retain the existing requirement that LECs provide interconnection to CMRS providers pursuant to good faith contractual negotiations. This proceeding also begins an inquiry regarding specific issues concerning interconnection among CMRS providers.

The proposals in the Notice will have an important effect upon entities in the 800 MHz, 900 MHz and 220 MHz band that currently governed by Part 90 of the Commission's rules. Business Radio Service licensees, now governed as private carriers, may also be categorized as CMRS providers and potentially subject to the equal access and interconnection obligations raised in this proceeding. The Company is a major manufacturer and distributor of products to these industry segments. Indeed, a significant percentage of 800 MHz licensees use the Company's LTR® signaling format. Licensees that use the Company's equipment will, therefore, be affected by the new rules adopted as a result of the Notice which will, in turn, affect the Company's ability to sell its products.

²The Company recently announced plans to manufacture narrowband equipment for the 220 MHz band using Linear Modulation Technology ("LMT"). It expects to manufacture and distribute 220 MHz products in the near future.

Moreover, E.F. Johnson supports a network of over 600 dealers nationwide, most of who hold licenses for 220 MHz, 800 MHz, 900 MHz and Business Radio Service systems. The Company's dealers will also be affected by the proposed new regulatory structure. Accordingly, E.F. Johnson is pleased to have this opportunity to submit the following Comments in response to the Notice.

II. COMMENTS

A. Equal Access

As the Company has noted in other contexts, certain classes of CMRS providers, currently governed as Part 90 licensees, should be subject to obligations different than those applicable to other CMRS licensees.³ E.F. Johnson continues to urge the Commission to exempt from CMRS obligations, including those that may be imposed in the context of this proceeding, "local" specialized mobile radio ("SMR") systems.⁴ To the extent the Commission imposes equal access and interconnection obligation on some CMRS providers, those providers should exhibit characteristics similar to those of cellular licensees, entities that the Commission tentatively decided should be subject to these requirements. Of those licensees currently regulated under Part 90 of the Commission's rules, only wide area SMR systems, which through frequency reuse, are designed in a fashion similar to cellular systems, should be subject to the same interconnection and equal access obligations as cellular systems.

E.F. Johnson agrees that whether the imposition of equal access obligations should apply depends in part upon an analysis of the market power of the various CMRS providers, and whether imposing those requirements would serve other Commission

³See, Comments of E.F. Johnson Company in Docket No. 94-33, submitted June 27, 1994.

⁴As it has in other contexts, the Company includes in the term "local SMR", any entity that will be subject to similar regulatory treatment. E.F. Johnson has urged the Commission to regulated 220 MHz systems, non wide area 800 MHz and 900 MHz SMR systems and Business Radio Service CMRS licensees as local SMR providers.

policy goals. As the Commission determined in the CMRS Second Report⁵ all CMRS providers, other than cellular licensees, currently lack market power. The Company agrees, for the reasons stated by the Commission, that in general, application of equal access obligations on entities that lack market power is not in the public interest.

Cellular carriers are licensed for hundreds of channels over a broad geographic area. However, typical local SMRs are licensed for only a few channels, based upon an area of operation defined by their transmitter site. Local SMR providers will never achieve the same market power as cellular licensees. Imposition of equal access obligations on CMRS licensees without market power will have unintended consequences that would detract from the benefits of imposing such obligations. The costs of implementing equal access would be so burdensome for local SMRs, for example, that these entities would no longer be able to remain in business, reducing service choices for consumers.

Nevertheless, the Company recognizes that even in the absence of market power, there may be benefits of imposing equal access obligations on CMRS providers for reasons of regulatory parity. That is, if the Commission imposes equal access obligations on cellular providers, services similar to those offered by cellular carriers should be subject to the same obligations. As the Company has noted elsewhere, local SMR licensees will never be competitive with cellular systems. Accordingly, the imposition of equal access obligations on these entities is unwarranted.

The Commission's rationale concerning the imposition of equal access obligations on wide area SMR systems is inapplicable to local SMR providers. The Commission states that the service characteristics and capabilities of wide area SMR licensees will make them competitors to cellular systems. Moreover, the Commission states that because wide area SMR systems are not fully developed today, the costs of imposing

⁵Implementation of Sections 3 (n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, Gen. Docket No. 93-252, 9 FCC Rcd 1411 (1994) (CMRS Second Report).

equal access obligations would be lower than the costs of converting existing systems. Both of these characteristics of wide area SMR systems are not present in local SMR systems. Local SMR licensees do not and will not exhibit the same service characteristics and capabilities as cellular systems. Moreover, unlike wide area SMR systems, local SMR facilities have been in operation for nearly twenty (20) years. Imposition of a new technical configuration on these systems now will impose severe financial hardship.

B. Implementation of Equal Access Obligations

In the event the Commission imposes equal access obligations on local SMR licensees, because of their status as CMRS providers, those obligations should require as little modification as possible to existing systems. In no case should these obligations be identical to those imposed on cellular carriers or other entities that the Commission finds to exert market power. For example, as the Commission suggests, if a CMRS customer demands access to an interexchange carrier ("IXC") other than the one with which the CMRS system is interconnected, the CMRS provider's obligation should be only to terminate the call at a LEC point of presence ("POP") within the CMRS service area. At that point, the call can be interconnected to the preferred IXC. Moreover, local SMR providers should be provided as much time as possible to meet whatever minimal obligations are imposed.

In addition, CMRS licenses that lack market power and that do not compete with cellular should not be required to hand off calls to an IXC anywhere within their service areas. As the Commission correctly notes, the service areas of local SMR licensees are defined by the effective propagation distance of radio signals, not geopolitical boundaries. It is infeasible for a local SMR to determine when a call will cross an arbitrary boundary within its service area, for purposes of interconnecting with an IXC. The Company agrees with the Commission that the public interest would be disserved by

a local service territory definition that impedes service offerings of mobile carriers, especially for wide area service.

The Notice addresses the technical feasibility of equal access interconnection as well as specific terms and conditions that may apply to interconnection.⁶ As noted above, the Company opposes the imposition of equal access obligations for local SMR licensees. Any obligations that are imposed on local SMRs should recognize both the small size and, in many instances, the maturity of these systems. Any obligations imposed, therefore, should seek to minimize the significant economic burdens that could be associated with compliance with the new requirements. These economic burdens could affect the viability of these systems, ultimately threatening the continued provision of service to the public. Elimination of the service, as a result of the costs imposed by compliance with new requirements, would not be in the public interest.

C. Interconnection

The Notice proposes rules to govern LEC-to-CMRS provider interconnection obligations. It also initiates an inquiry to gather information concerning CMRS-to-CMRS interconnection. The Company supports efforts to ensure that CMRS licensees are provided with fair and reasonable opportunities to interconnect with LEC facilities. It also agrees that the issue of CMRS to CMRS interconnection raises difficult issues deserving additional consideration.

The Company generally supports continuation of the current practice of requiring LECs to establish, through good faith negotiations with CMRS providers, the rates, terms and conditions of interconnection. This process will likely result in service arrangements better tailored to interconnection needs than would be possible under a tariffed rate structure. So long as the Commission aggressively enforces the provisions of the

⁶In particular, the Notice addresses the so called "1+" form of access, presubscription, balloting and allocation issues, cost recovery and billing and collection matters.

Communications Act which prohibit carriers from offering unreasonably discriminatory rates, the negotiation process should produce results favorable for both parties.

E.F. Johnson does not support the imposition of a requirement that all CMRS providers offer interconnection to all other CMRS providers. It is illogical to assume that the subscriber of a local SMR system desires, or is willing to pay for, the ability to directly interconnect with, for example, personal communications service ("PCS") systems. The expectation of that customer is that it will be able to communicate with other affiliated mobile units and, through interconnection with a LEC, other locations in the public switched telephone network ("PSTN").

In another context, the Company argued that there should be equipment compatibility within services deemed to be substantially similar to that offered by cellular providers.⁷ However, while customers of cellular like service should enjoy the same compatibility realized by users of the landline telephone system, within their service, there is no reason for those customers to expect to be able to access, either through their end units or direct interconnection, access to other CMRS facilities. The Company agrees that the CMRS marketplace will function as an effective regulator of interconnection arrangements and that imposition of interconnection obligations on CMRS providers is premature at this stage of the development of CMRS systems.

CMRS providers should have the commercial freedom to structure relationships between themselves. Those relationships may provide competitive advantages and need not be imposed by the Commission. Where relationships offering direct interconnection are not economically desirable, calls may be routed between CMRS systems through the LECs and IXC's. In the event that the Commission determines to impose interconnection obligations, it should do so only a service by service basis. While it may be appropriate to require all cellular carriers to interconnect with PCS licensees, imposition of the same requirements on local SMR licensees may not be necessary.

⁷See Comments of E.F. Johnson Company, Docket No. 93-252, submitted June 21, 1994 at pp. 14-16.

Finally, should the Commission impose resale obligations on CMRS providers, those requirements should only apply to services found to be like cellular, where the FCC has already imposed similar requirements. The record does not support mandatory resale of, for example, local SMR service. To do so would be economically burdensome on the local SMR provider, with no discernible benefit to the public.

III. CONCLUSIONS

Of those entities currently regulated under Part 90 of the rules, only wide area SMR systems are designed in a fashion similar to cellular systems and should be subject to the same interconnection and equal access obligations as cellular systems. In the event the Commission imposes equal access obligations on local SMR systems, those obligations should require as little modification as possible to existing systems, some of which have been in operation for more than twenty (20) years. Finally, the Company supports efforts to ensure that CMRS licensees are provided with fair and reasonable opportunities to interconnect with LEC facilities. However, it does not support the Commission's imposition of methods for CMRS-to-CMRS interconnection. Those arrangements should be the result of negotiations between CMRS carriers.

WHEREFORE, THE PREMISES CONSIDERED, the E.F. Johnson Company hereby submits the foregoing Comments and urges the Commission to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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